



Signed and Filed: July 11, 2014

A handwritten signature in dark ink, appearing to read "T. E. Carlson".

THOMAS E. CARLSON U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re) Case No. 13-31914 TEC
WESTERN ASBESTOS COMPANY,) Chapter 11
Debtor.)

MEMORANDUM RE OBJECTION OF MICHAEL J. MANDELBROT
TO TENTH ANNUAL REPORT

On June 27, 2014, the court held a hearing regarding Trustees' Motion to Approve and Settle Tenth Annual Report and Accounting, Audited Financial Statements, and Claim Report (the Motion). Thomas E. Patterson appeared for Western Asbestos Settlement Trust (the Western Trust). Michael J. Mandelbrot, claiming to represent various beneficiaries of the Western Trust, appeared at the hearing and filed an opposition to the Motion (the Mandelbrot Objection). Michael McDermott, a beneficiary of the Western Trust, appeared and filed written opposition to the Motion (the McDermott Objection).

A. The Mandelbrot Objection

The Mandelbrot Objection must be overruled, because legally

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1 Mr. Mandelbrot is a stranger to the current proceeding with no
2 standing to challenge the report. Although Mandelbrot describes
3 himself as counsel for beneficiaries of the Western Trust, the
4 record shows that he has been ordered to cease all representation
5 of beneficiaries of that trust.

6 Representatives of two other asbestos bankruptcy trusts filed
7 an adversary proceeding against Mandelbrot in the United States
8 Bankruptcy Court for the Central District of California seeking:
9 (1) declaratory relief that Mandelbrot had engaged in a pattern and
10 practice of submitting false claims to those trusts; and (2)
11 recovery of damages resulting from that conduct. J.T. Thorpe
12 Settlement Trust et al. v. Michael J. Mandelbrot et al. (In re J.T.
13 Thorpe, Inc. and Thorpe Insulation Company), Case Nos. 12-ap-2182
14 and 12-ap-2183. On the third day of the trial in that action, the
15 parties reached a settlement that they read into the record.
16 Mandelbrot, who was represented by highly competent counsel at
17 trial and in the negotiation of the settlement, agreed to the
18 settlement on the record. The terms of the settlement are embodied
19 in an order of Judge Bluebond entered on April 4, 2014 (the Order).

20 Under the settlement, the plaintiffs in the adversary
21 proceeding dropped their damage claims against Mandelbrot. For his
22 part, Mandelbrot agreed to cease representation of all clients
23 before the Thorpe Trusts, the Plant Trust **and the Western Trust.**

24 The Order embodying the settlement agreement provides in
25 relevant part:

26 (3) The Court has jurisdiction to approve, and hereby
27 approves and finds valid and enforceable, the Agreement
28 reached in open court on January 23, 2014. As noted in
the Court's order on the Thorpe Trusts' Motion to Enforce
the Agreement, the Agreement contains all material terms

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1 of the agreement reached by the parties and affirmed by
2 Mr. Mandelbrot and his counsel on the record on that
3 date.

4 . . .

5 (6) Effective immediately, Mandelbrot shall file no new
6 claims with the J.T. Thorpe Trust, the Thorpe Insulation
7 Trust, **the Western Trust**, or the Plant Trust.

8 (7) Effective immediately, Mandelbrot shall cease all
9 activity with respect to claims ("Pending Claims") for
10 the J.T. Thorpe Trust, the Thorpe Insulation Trust, and
11 **the Western Trust** and shall transfer each Pending Claim
12 to an attorney who will take responsibility as if he or
13 she were the attorney that originally filed the Pending
14 Claim. Any document submitted to the any of these trusts
15 with respect to Pending Claims that bears Mandelbrot's
16 signature shall not be considered valid by the any of the
17 trusts. . . . Effective immediately, Mandelbrot shall not
18 receive any payments from any of these trust for any
19 reason.

20 (8) For all claims resolved prior to the date of this
21 Order for which Mandelbrot has represented claimants with
22 the J.T. Thorpe Trust, the Thorpe Insulation Trust, and
23 **the Western Trust**, those claims will also be transferred
24 to a new attorney and Mandelbrot shall not be counsel of
25 record nor serve as co-counsel of record with respect to
26 such claims. **For example, Mandelbrot shall have no
27 standing to challenge the fiduciary decisions or conduct
28 of those trusts, with respect to any rights of those
claimants to future payments for the J.T. Thorpe Trust,
the Thorpe Insulation Trust and the Western Trust, such
as decisions whether or not to change the payment
percentage or funds received ratio.**

1 . . .

2 (14) If Mandelbrot violates any of terms set forth
3 herein, . . . **the Western Trust** . . . shall have the
4 right to bring such violations to the attention of this
5 Court of [sic] their supervising bankruptcy courts.

6
7 Mr. Mandelbrot has filed a notice of appeal regarding the
8 Order, but he acknowledged at the June 27, 2014 hearing in this
9 court that the Order has not been reversed or stayed pending
10 appeal.

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1 I determine that under the Order: (1) Mandelbrot may not
2 appear as a representative of Western Trust beneficiaries in the
3 current proceeding; and (2) that this court should disregard any
4 papers Mandelbrot purports to file in that capacity. I further
5 determine that Mandelbrot's objection is asserted solely in his
6 capacity as counsel for beneficiaries of the Western Trust, and
7 that he does not articulate any other basis of standing to object
8 to the Motion.

9 In its reply to the Mandelbrot Objection, the Western Trust
10 sought to have this court strike the Mandelbrot Objection on the
11 basis that it contained scandalous material. See Fed. R. Civ.
12 Proc. 12(f). Counsel for the Western Trust withdrew that request
13 at the hearing.

14 B. The McDermott Objection

15 Michael McDermott, a beneficiary of the Western Trust,
16 submitted a letter to the court in which he raised two complaints
17 about the administration of the Trust: that current claimants
18 should be paid more than 44 percent of their damages; and that the
19 25 percent cap on attorney fees is too high. These arguments are
20 not valid objections to approval of the report. The payment
21 percentage reflects the Trustees' determination of what funds must
22 be retained to ensure that future claimants are paid on the same
23 basis as present claimants. McDermott cites no facts to contradict
24 the Trustees' determination that current claimants cannot be paid a
25 higher percentage of their damages without creating undue risk that
26 future claimants will not receive the same percentage of their
27 damages. McDermott's dissatisfaction with the 25 percent cap on
28 attorney's fees is also not a valid objection to the report.

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1 Attorney's fees are negotiated between claimants and their
2 attorneys and are not set by the Trust. The 25 percent cap in no
3 way prevents claimants from seeking representation on more
4 favorable terms.

5 McDermott also attempted to adopt the Mandelbrot Objection as
6 his own after the court ruled that Mandelbrot lacked standing. As
7 a beneficiary of the Western Trust, McDermott has standing to
8 object to the report. McDermott, who stated that he is an
9 attorney, acknowledged at the hearing that he has no knowledge of
10 the facts asserted in the Mandelbrot Objection. The Mandelbrot
11 Objection is based on allegations of criminal behavior that are
12 seriously called into question by Judge Bluebond's findings in the
13 Thorpe adversary proceedings. In any event, it is not appropriate
14 for McDermott to assert the Mandelbrot Objections without himself
15 attesting that they have a basis in fact.

16 Accordingly, the McDermott Objection is overruled.

17 CONCLUSION

18 The Mandelbrot and McDermott Objections are overruled. No
19 other objections to the Motion having been filed or raised orally
20 at the hearing, the Motion is granted.

21 ****END OF MEMORANDUM****

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